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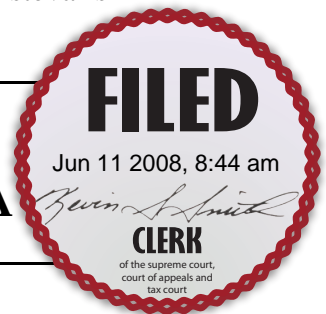
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**IN THE
COURT OF APPEALS OF INDIANA**



RENUKA DEVI MAHADEVA,
individually and as personal representative
of the estate of MAHADEVA RUDRAPPA,

Appellant-Plaintiff/Cross-Appellee,

vs.

RUDRAPPA GANGADHAR,
MEERA GANGADHAR, CHANDRA K.
ARORA, and TRI-FAB, LLC,

Appellees-Defendants,

and

RUDRAPPA GUNASHEKAR,

Appellee-Defendant/Cross-Appellant.

No. 02A03-0709-CV-437

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Daniel G. Heath, Judge
Cause No. 02D01-0201-PL-17

June 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Renuka Devi Mahadeva (“Renuka”), individually and as personal representative of the estate of Mahadeva Rudrappa, appeals the trial court’s denial of her fraud claim, which included claims for emotional distress damages, punitive damages, and damages for attorney fees related to underlying litigation. We affirm in part and remand in part. Rudrappa Gunashekar (“Gunashekar”) filed a cross-appeal, claiming that the trial court erred in entering judgment against him on Renuka’s conversion claim. Renuka filed a motion to dismiss Gunashekar’s cross-appeal, which we grant by separate order.

Issues

We restate Renuka’s issues as follows:

- I. Whether the trial court erred in denying her claim for emotional distress damages;
- II. Whether the trial court erred in denying her claim for punitive damages;
- III. Whether the trial court erred in denying her claim for attorney fees related to underlying litigation; and
- IV. Whether Gunashekar’s cross-appeal should be dismissed as untimely.

Facts and Procedural History

We summarize below the trial court’s findings and conclusions relevant to this appeal.

On June 18, 1980, Renuka married Rudrappa Mahadeva (“Mahadeva”) in India. In May 1983, she moved to the United States to join her husband, who was already living in Fort Wayne. At that time, Mahadeva worked approximately seventy hours per week at a Fort Wayne liquor store named Pontiac Liquors.

Pontiac Liquors was owned by Bangalore Brothers, Inc. (“BBI”). BBI’s articles of incorporation were filed in July 1981 and showed Rudrappa Gangadhar (“Gangadhar”) as the corporation’s registered agent, sole director, and incorporator. BBI obtained a liquor license in order to do business as Pontiac Liquors. In 1990, Gangadhar transferred all of BBI’s shares to his younger brother, Mahadeva, while retaining his status as sole director of the corporation. Renuka was not a paid employee at the liquor store, but she often assisted her husband by running errands, helping with inventory, and so on. She was not involved in the financial aspects of running the store, nor was she an officer of BBI. Mahadeva passed away unexpectedly on July 16, 2001. At the time of his death, he remained the sole shareholder in BBI.

Shortly after Mahadeva’s death, Chandra K. Arora informed Renuka that he had wired \$40,000 into Mahadeva’s bank account. Arora said that this transfer was a loan, for which he now wanted to be repaid. When Renuka asked Arora to show her some proof of the loan, he told her that she would see a \$40,000 deposit on Mahadeva’s bank account statement. Renuka did discover record of a deposit in the amount of \$44,950 on the Mahadevas’ joint bank account statement. Renuka was reluctant to pay Arora due to the discrepancy of the amounts. She again asked Arora for documentation of the loan, and he again replied that he had none. Soon thereafter, Arora filed suit against Renuka for repayment of the loan. His

complaint included a copy of a promissory note signed by Gangadhar as President of BBI and witnessed by P.R. Hariharan. Both of these men were Arora's close friends. The trial court concluded that the promissory note was false and had been created after Renuka's requests for documentation of the alleged loan.

Within six weeks of Mahadeva's death, Gunashekar—representing himself and his wife as “sellers”—entered into a contract for conditional sale of real estate regarding 2220 East Pontiac Street, a property owned by Mahadeva at the time of his death. Gunashekar collected from the buyer, Frederick J. Morgan, a down payment of \$2,600 plus five monthly payments totaling \$3,000.

Also, within a few weeks of Mahadeva's death, Gangadhar decided to sell BBI's assets, including its liquor license. He negotiated a deal with S&V Liquors, Inc. (“S&V”), and on August 24, 2001, BBI and S&V entered into a Purchase Agreement. According to the agreement, S&V would pay to BBI \$220,000 in exchange for BBI's liquor license, equipment, furniture, fixtures, and goodwill. In late September or early October of 2001, Gangadhar visited Renuka at home and asked her to sign a document for the purpose of selling BBI's assets. He told Renuka that his brother Rudrappa Gunashekar (“Gunashekar”) owned the real estate upon which Pontiac Liquors was housed, that Gangadhar's wife, Meera, owned the liquor license, and that Renuka, as a “stockholder,” was entitled to any proceeds from the sale of BBI's inventory. Appellant's App. at 40. At that meeting with Gangadhar, Renuka signed a “Consent to Action in Lieu of Special Meeting of Board of Directors of Bangalore Brothers, Inc.” She did so believing Gangadhar's statement that she had a right only to the proceeds of the sale of the inventory.

To facilitate the sale of BBI to S&V, Gangadhar sent a consent to transfer to the Alcohol and Tobacco Commission (“the ATC”). Via public notice, Renuka discovered that a public meeting had been scheduled regarding the impending transfer of Pontiac Liquor’s liquor license. Gangadhar had not informed Renuka of either the transfer or the public meeting. Renuka attended the meeting. Gangadhar also appeared, as did a representative of S&V. After the meeting, Renuka advised the ATC officials that her deceased husband, as sole shareholder of BBI, had owned the liquor license at issue and that Gangadhar did not have the right to sell it. Upon hearing Renuka’s claim, the officials reconvened the meeting and informed Gangadhar and the S&V representative that this transfer could be a “civil matter” requiring an attorney’s review. *Id.* at 42. In a private discussion outside the meeting room, Gangadhar told Renuka that if she did not immediately approve the transfer and sale, he would “make sure [she’d] never see a dime” from the deal. *Id.*

During her review of her deceased husband’s financial records, Renuka discovered that on May 19, 2001, Mahadeva had written a check payable to Egenolf Industrial Group, Inc. in the sum of \$4,600. Further investigation revealed that Mahadeva had given a signed blank check to Gunashekar, who had then used the check to pay for the delivery of a machine to and for the benefit of Tri-Fab, LLC, a business owned by Gangadhar. There was no evidence that Mahadeva had received any consideration for this payment.

In November 2001, Renuka hired legal counsel. On December 10, 2001, Renuka became the sole shareholder of BBI when Mahadeva’s 100 shares of BBI stock were transferred to her as personal representative of his estate. Shortly thereafter, she began to operate the business of Pontiac Liquors. She kept the store open until March 2002, at which

time she sold various tangible assets of BBI, such as the cash register and coolers. When the corporation became insolvent, a receiver was appointed to preserve its assets. The receiver oversaw the 2006 sale to S&V of BBI's liquor license for \$220,000.

On January 11, 2002, Renuka filed suit against Appellees-Defendants in the Allen Superior Court.¹ She brought claims against Gunashekar, Gangadhar, and Meera for fraud, constructive fraud, and breach of fiduciary duty. She also alleged that Gunashekar had committed conversion by accepting payments for the sale of the property at 2220 East Pontiac Street. She sued Tri-Fab, LLC for unjust enrichment. As for the alleged promissory note, Arora brought suit against Renuka for \$40,000.

A bench trial was held on July 17 and 19, 2006. On February 1, 2007, the trial court issued findings of fact and conclusions thereon. The court ruled against Renuka on her claims of fraud, constructive fraud, and breach of fiduciary duty. The court ruled in Renuka's favor on her conversion claim and ordered Gunashekar to pay her \$41,512.44 in damages. The court entered judgment in favor of Renuka on Arora's promissory note claim. The court entered judgment for Renuka on her unjust enrichment claim against Tri-Fab, LLC and awarded her damages in the amount of \$7,029.46. Finally, the trial court denied Gangadhar and Meera's claim against Renuka for frivolous litigation. This appeal ensued.

¹ The original lawsuit included Bangalore Brothers, Inc. d/b/a Pontiac Liquors, as a plaintiff. Although the parties to this appeal listed Bangalore Brothers, Inc., as an appellant in the case caption, the record indicates that the corporation was dissolved in 2006 following receivership proceedings.

Discussion and Decision

Where a trial court has entered findings of fact and conclusions thereon pursuant to a party's request, we engage in the following two-tiered standard of review:

We must first determine whether the evidence supports the findings of fact and then whether the findings support the judgment. We will not reverse the trial court's findings and judgment unless they are clearly erroneous. Findings of fact are clearly erroneous when the record lacks any facts or reasonable inferences from the evidence to support them. The judgment is clearly erroneous when it is unsupported by the findings of fact and conclusions entered on the findings. In making these determinations, we will neither reweigh the evidence nor judge witness credibility, considering only the evidence favorable to the judgment and all reasonable inferences therefrom.

While we defer substantially to findings of fact, we do not do so for conclusions of law. We apply a de novo standard of review to conclusions of law and owe no deference to the trial court's determination of such questions.

Mueller v. Karns, 873 N.E.2d 652, 657 (Ind. Ct. App. 2007) (citations omitted). Also, we note that Renuka appeals from a negative judgment and will prevail only if she establishes that the judgment is contrary to law. *Helmuth v. Distance Learning Sys. Ind., Inc.*, 837 N.E.2d 1085, 1089 (Ind. Ct. App. 2005). A judgment is contrary to law when the evidence is without conflict and all reasonable inferences to be drawn from the evidence lead only to one conclusion, but the trial court reached a different conclusion. *Id.*

I. Emotional Distress

Renuka contends that the trial court erred in failing to award damages to compensate for her emotional distress resulting from Gangadhar's allegedly fraudulent conduct.² The

² In her appellant's brief, Renuka seems to combine her arguments regarding several types of damages into one general argument, making it somewhat difficult to determine exactly which trial court rulings she is appealing. She apparently does not challenge the trial court's conclusion that she failed to prove any actual monetary loss resulting from Dr. Gangadhar's conduct. To the extent that she does raise this issue, however, we find no clear error. As the trial court noted in its order, Renuka failed to present any specific evidence of monetary loss, and, in fact, she testified that her own actions, such as her suspension of the liquor license sale and her reduction of Pontiac Liquor's hours, caused lost profits.

trial court considered her request for these damages as a separate claim for intentional infliction of emotional distress, although it appears that Renuka did not specifically identify it as such.³ The trial court properly concluded that Renuka's claim did not satisfy the rigorous requirements of this tort, which are that the defendant (1) engaged in extreme and outrageous conduct (2) which intentionally or recklessly (3) caused (4) severe emotional distress to another. *See Branham v. Celadon Trucking Servs., Inc.*, 744 N.E.2d 514, 523 (Ind. Ct. App. 2001), *trans. denied*.

Renuka contends that the trial court failed to apply another relevant, less stringent, analysis to her emotional distress damages claim. There is in fact a line of Indiana cases holding that a trial court may award compensatory damages for emotional distress unaccompanied by physical injury in tort actions involving intentional conduct, including actions alleging intentional fraud.⁴ *See, e.g., Munsell v. Hambright*, 776 N.E.2d 1272, 1281 (Ind. Ct. App. 2002), *trans. denied* (2003); *Mullen v. Cogdell*, 643 N.E.2d 390, 402 (Ind. Ct. App. 1994), *trans. denied* (1995).

Actual fraud exists when there is a material misrepresentation of a past or existing fact made with knowledge of or reckless disregard for the falsity of the statement to the detrimental reliance of a third party. *Munsell*, 776 N.E.2d at 1281. If these elements are established, the plaintiff may recover emotional distress damages if the fraudulent conduct

³ In its order, the trial court stated, "For negligent infliction of emotional distress, Indiana utilizes the 'modified impact rule.' Plaintiff has made no showing of meeting such a 'modified impact' in this cause. Therefore, the Court assumes the Plaintiff is seeking emotional distress damages because of intentional infliction of emotional distress." Appellant's App. at 52.

⁴ Compensatory damages for mental distress are generally recoverable only when the distress is accompanied by and results from a physical injury caused by an impact. *Munsell*, 776 N.E.2d at 1281.

“involves the invasion of a legal right that by its very nature is likely to provoke an emotional disturbance.” *Id.* Through the years, this Court has chosen not to include or exclude any particular types of fraud with regard to this test. In each case, it is the fact-finder who must determine whether an act of fraud involves the invasion of a legal right that by its very nature is likely to provoke an emotional disturbance. *Id.*

We hereby remand for the trial court’s consideration of Renuka’s claim for emotional distress damages pursuant to this intentional conduct exception.

II. Attorney Fees for Underlying Litigation

Renuka claims that the trial court erred in failing to award attorney fees she incurred defending litigation related to Gangadhar’s alleged fraudulent conduct. Specifically, S&V sued BBI after Mahedeva halted the liquor license purchase, and she engaged in litigation against Arora regarding the false promissory note witnessed by Gangadhar. In her motion to correct error, Renuka stated that her “incurrence [sic] of attorney’s fees to defend these claims was the natural and foreseeable consequence of Gangadhar’s conduct. As a result she was entitled to recover attorney’s fees in connection with these lawsuits.” Appellant’s App. at 247.

As Gangadhar points out, however, Renuka raised this issue for the first time in her motion to correct error. At trial, she specifically requested an award of attorney fees incurred in pursuing her claims against Gangadhar, which the trial court denied, as well as fees related to her claim against Gunashekar, which the trial court granted. She also requested an award of \$20,000 as “compensatory and emotional distress damages as a result of the conduct of Gangadhar and Meera Gangadhar[,]” but she presented no evidence regarding underlying

attorney fees in support thereof. Nor did she include such a request in her proposed findings of fact and conclusions of law. Therefore, she has waived appellate review of this issue. *See Troxel v. Troxel*, 737 N.E.2d 745, 752 (Ind. 2000) (holding that party may not raise issue for first time in motion to correct error or on appeal).

III. Punitive Damages

Renuka also appeals the trial court's denial of her punitive damages claim.⁵ Indiana law requires the award of compensatory damages as a prerequisite to recovery of punitive damages. *Sullivan v. Am. Cas. Co.*, 605 N.E.2d 134, 140 (Ind. 1992). As Renuka recovered no compensatory damages in this case, the trial court did not err in denying her punitive damages claim. Upon remand, however, if the trial court chooses to award Renuka compensatory damages for emotional distress, then the trial court may reconsider her punitive damages claim as well.

IV. Gunashekar's Cross-Appeal

Rudrappa Gunashekar filed a cross-appeal in which he argues that the trial court erred in entering judgment against him and in favor of Renuka in the amount of \$41,512.44. Renuka timely filed her appellant's brief on November 28, 2007. Gunashekar was therefore required to file his cross-appeal within thirty-three days thereafter, or by December 31, 2007. *See* Ind. Appellate Rule 45(B)(3). Gunashekar did not file his cross-appeal until January 14, 2008. On that same date, counsel George Sistavaris entered his appearance on behalf of Gunashekar. On January 31, 2008, Renuka filed a motion to dismiss Gunashekar's cross-appeal as untimely.

In his reply brief, Gunashekar basically argues that he committed “no harm” and thus “no foul” because his counsel, George Sistevaris, had entered his appearance for several *other* defendant-appellees in this case on November 5, 2007, and, because, on December 19, 2007, Sistevaris had filed a motion for extension of time to file an appellee’s brief for one of those defendant-appellees, Rudrappa Gangadhar. This Court granted Gangadhar an extension of time until January 14, 2008—it was on this date that Sistevaris filed Gangadhar’s appellee’s brief, *as well as* his appearance for Gunashekar and Gunashekar’s cross-appeal.

Gunashekar states, “The basis for the motion for enlargement of time which was filed by counsel for Dr. Gangadhar would not have been altered if counsel also represented Mr. Gunashekar at the time the motion was made, and there is no reason to believe that the enlargement would not have been granted to the same counsel representing two appellees instead of one.” Cross-Appellee’s Reply Br. at 7. Gunashekar’s hypothetical reasoning is unpersuasive. The fact remains that Sistevaris did not appear on behalf of Gunashekar until January 14, 2008, fourteen days after the expiration of time to file his cross-appeal. The fact that Sistevaris had previously entered an appearance for other defendants-appellees and obtained an extension of time for one of them does not excuse Gunashekar’s late filing. In sum, Gunashekar’s cross-appeal was untimely, and by separate motion, we grant Renuka’s motion to dismiss.

Based on the above, we affirm the trial court’s denial of Renuka’s claim for attorney fees related to underlying litigation. We remand for the trial court’s consideration of

⁵ Our review of the trial court’s judgment reveals no mention of punitive damages. Both parties seem

Renuka's claims for emotional distress damages and punitive damages in light of this opinion.

Affirmed in part and remanded in part.

BAILEY, J., and NAJAM, J., concur.

to agree, however, that the trial court considered and denied Renuka's punitive damages claim.